North Dakota Law Review

Volume 41 | Number 2 Article 10

1964

Book Reviews

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BOOK FEATURE

STATES OF LAWS AND LAWS OF STATES: A REVIEW

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PRIVATE INTERNATIONAL LAW IN THE EUROPEAN PEOPLE'S DEMOCRACIES, by Prof. Istvan Szaszy, LL.D.** Budapest: Akademiai Kiado, The Publishing House of the Hungarian Academy of Science, 1964. Pp. 403, $6.50.

An interesting phenomenon in intergroup and international relations is the tendency to devalue and debunk ethnocentrically the basic institutions of the out-group. Thus we find people disparaging unaccustomed food, despising unfamiliar religious practices, and finding mores and folkways of the stranger abhorrent, his country barbaric and devoid of culture worthy of the name.

Among these institutions which are usually the butt of criticism and disrespect are frequently, if not always, the legal institutions of the country. Thus, it is not especially strange that in the time of the great east-west schism legal institutions in both camps are considered not legal at all, the states developing and perpetuating such institutions hardly more than pseudo-legal, their justice certainly a quite unjust and unjustifiable accumulation of laws.

There is one sphere, however, in which these legal institutions and laws must, by force of necessity, become reconciled or in some way interconnected—the field of international law. We welcomed therefore the opportunity to review this extremely interesting and in fact significant book from what is frequently referred to in this country as the land of double-think, because it enables us to look behind the Iron Curtain and to gain insight into the legal mind of communistic socialism.[1]

GENERAL PART: SUBJECT AND SYSTEMS

The author is quite right in stating that the socialist revolution

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1. In addition to the jurists referred to in the text and bibliography the author cites specifically Lunz for the Soviet orbit, Reczei for Hungary, Ludwiczak for Poland, Wieman for East Germany, all of whom, except Ludwiczak, are at least partially translated into German and thus easily accessible to western jurists; of the American authorities on conflict of laws the author cites Ehrenzweig and Rabel, as well as the RESTATEMENT OF THE LAW OF CONFLICT OF LAWS (1934, Supp. 1948), but not the RESTATEMENT 2d, now in preparation.

after the First World War "changed the aspect of the world."[2] With the arrival of socialist states, their relations with western states as well as among themselves had to be rethought. Whereas relations between sovereign states themselves are dealt with through public international law, the relations between the enterprises and economic organizations of the various states are regulated by private international law. The author uses his enormous knowledge of the literature, and nearly 500 references, to show how the concept of private international law has been changed in the various European people's democracies, specifically Albania, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Rumania, with frequent references to the U.S.S.R. and occasional consideration of legal doctrines of the Chinese People's Republic. In his opinion, "private international law is the sum-total of the legal norms which govern—partly by direct legal provisions (rules of substantive law), partly by indirect legal provisions (conflict rules)—the civil, family and labour law relations of international character which are related to several legal systems and consequently contain foreign elements."[3] Thus he includes copyright, patent, and trademarks, in addition to obligations (contracts), sales, labor, family laws, and laws of succession.

In line with general socialist thinking, Professor Szaszy disapproves of the term private international law, because "*socialist private international law is neither international, nor private. . . .* not international because it does not govern reciprocal legal relations between states, but those between natural and legal persons, citizens and economic organizations. . . . not private because in socialist societies economic conditions have no private character"[4]; he then cites Lenin, "we do not recognize anything 'private', for us, in the domain of economics, everything belongs to public, not private law."[5] Nevertheless, he is in favor of keeping the term for convenience sake. Of course, the learned author is quite aware that in Anglo-American law the term conflict of laws is customary but he makes no attempt to break with continental, particularly French and Austrian tradition.

"The starting point of the theory of the private international law of people's democratic countries, is the *foreign policy* of the country concerned; the content of these rules is determined by the general aspects of *foreign policy* of that country."[6] It follows that any discrimination between socialist states is inadmissible; it also follows that discrimination against western states will be

2. P. 9. All page numbers following refer to the book under review, except when noted otherwise.
3. P. 13.
4. Pp. 14-15.
5. P. 15.
6. P. 16. (Reviewer's italics).

approved of under certain circumstances, specifically if the case in question should prove contrary to the public policies of the respective people's democracy. Consequently, "the number of cases in which the judge is authorized to set aside the application of a legal foreign rule by invoking the specific policy of his country, i.e., the clause of *ordre public*, should be restricted as far as possible."[7] Thus he inveighs particularly against western judgments in expropriation cases which did not recognize laws of socialist states.

Not only the concept, but also the object of private international law is subjected to different interpretations. Professor Szaszy points out, correctly, that there is no more uniformity among western powers than among eastern. In France as well as in other countries of Romance languages, the subject matter of private international law is quite comprehensive, whereas "Anglo-American theory regards the procedural aspect as its starting point. . . ."[8] The German, Swiss, and Scandinavian theories as well as the French and Anglo-Saxon are rejected by the socialist theory of private international law.

Szaszy's elaboration of the socialist theory indicates that he, and most of the sources he relies upon, favor application of the *lex patriae*. Szaszy's whole treatise, in fact, appears directed against Ehrenzweig's attempt to base the law of conflict of laws on the *lex fori*. Ehrenzweig's treatise[9] was therefore selected for comparative purposes as a representative treatment of modern American conflicts law.[10] In spite of the fact that the two authors appear miles apart in theory, they frequently come far closer to common practical applications than perhaps either one of them would be willing to admit.

Professor Szaszy makes the very interesting point that "the overriding question is not the rules of law of *which* state are to be applied but another one, namely, *in what manner* should these relations be regulated."[11]

Again quoting profusely from a tremendous literature, both east and west, Professor Szaszy points out the cleavage in the capitalist camp between "the so-called internationalist theory, inspired by natural law and of a universalistic character" and the "so-called nationalist opinion, based on positivist foundations and

7. Pp. 19-20.

8. P. 21.

9. EHRENZWEIG, CONFLICT OF LAWS (1962). Ehrenzweig's index does not even contain the term *lex patriae;* however, he, as well as most authors, speaks of "nationality."

10. Interestingly enough Ehrenzweig was almost alone among modern American scholars cited by Szaszy. See his bibliography, pp. 380-401.

11. Pp. 37-38. It cannot be the purpose of this review to contribute to the comparative literature on conflict of laws; suffice it to say that what Ehrenzweig seems to say is that the law of the *proper* forum should be applied, a standpoint which *in praxi* does not seem to be too far distant from Szaszy's.

of a particularistic character. . . ."[12] Both are united, according to the author, in modern Soviet writings so that private international law is not considered part of public international law, but rather part of the domestic legal system of the state in which it is applied. According to Professor Szaszy, private international law cannot be considered as part of civil law nor as part of economic law either. It is simply *"an independent branch of the domestic legal system."*[13]

Sources

The sources of private international law in people's democracies include the provisions of domestic laws, international conventions and international custom, but not jurisprudence (the body of legal knowledge).[14] Moreover, we see that they are greatly influenced by the old Austrian draft of 1913. This should not come as a surprise to anybody who realizes that the territory of the people's democracies either formed part of the Austro-Hungarian Empire, or were and are considerably influenced by its legal system. Moreover, most of the people's democracies adhered to any number of conventions either under their old territorial boundaries or in the inter-war years or later as independent socialist states. Professor Szaszy attaches the greatest importance to constitutional acts of the new states—but only in the German Democratic Republic, Czechoslovakia, and Poland are separate unified codes of private international law in force, not in the Soviet Union; the one in the Chinese People's Republic has been repealed.[15] Some states under discussion "are parties to the extensive *multi-lateral conventions* on private international law, but most of them, like the Soviet Union, are not parties to these."[16] Professor Szaszy admits, of course, that the German and Polish laws were enacted prior to the establishment of the people's democracies. He then indicates that some people's democratic states are parties to the extensive multi-lateral international conventions; so for instance, the German

12. P. 41. For concurrence and further explanation, see EHRENZWEIG *passim*.
13. P. 49.
14. P. 56. It seems that Professor Szaszy uses the term "jurisprudence" in the French sense of judicial practice.
15. P. 57. With regard to the Austrian draft of 1913, Professor Walker makes this comment: Theory recognized and practice felt that the regulation of private international law was meager and inefficient. In revising the Allgemeines Buergerliches Gesetzbuch (General Code of Civil Law) of Austria, it was noted that the code contained many very real gaps and that there were no appropriate provisions for questions on international private law included. Therefore, the Austrian Herrenhaus (Upper Chamber) resolved on December 19, 1912 to request the government to accelerate as much as possible a special law on international private law. Professor Walker, as Chief of the International Division of the Ministry of Justice at the time, worked out the draft of a law in 1913, but apparently because of the war, it never reached Parliament. WALKER, INTERNATIONALES PRIVATRECHT 53 (5th ed. 1934) (paraphrased and translated by reviewer). Rabel states that "The excellent Austrian draft of 1913 of an international private law . . . served as the basis of the important Polish Law of August 2, 1926 (whose principal author Zoll had been a member of the Vienna draft committee), as well as for the Czechoslovakian Law of March 11, 1948. Indirectly the German law has influenced all more recent legislative projects in Europe." 1 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 30 (2d ed. 1958).
16. P. 58.

Democratic Republic, Hungary, Poland, Czechoslovakia, and Rumania are parties to the convention of the Hague of July 17, 1905, on civil procedure and in interdiction of incapable persons, among others of the same date.

It would be of great interest to follow the meanderings of these conventions on liens, industrial property, copyright and others, from the convention of Madrid (April 14, 1891) on. Depending upon the content of the legal provisions these conventions are bi-lateral (for instance in the cases of presumption of death and of marriage). In the former "the *lex patriae* shall apply and jurisdiction shall be vested with the authorities of the home country";[17] in the latter case "the formal validity of marriage shall be adjudged in accordance with the *lex loci actus*, and the substantive conditions of marriage in conformity with the *lex patriae* of each party to the marriage."[18]

With regard to codification of private international law we find that most of the people's democracies, namely Albania, Hungary, Bulgaria, and Rumania have no unified codes. Czechoslovakia, however, has an act of international private law and a rich harvest of "bi-lateral commercial treaties bearing on private international law with Afghanistan, Albania, Australia, Bolivia, Brazil, Bulgaria, Canada, Denmark, Ecuador, Egypt, Finland, France, Great Britain, Greece, Hungary, Iran, Iceland, Jugoslavia,[19] Lebanon, Liberia, Mexico, the Netherlands, Norway, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, Syria, Turkey, Union of Belgium-Luxemburg, and Union of South Africa."[20]

Literature of Choice of Law Rules

In studying private international law in people's democratic countries, a distinction should be made in the literature before and after the socialist revolution. Again the so-called successor states either *in toto* or partially will have been influenced by the Austrian theory of pre-World War I and their mutual relationships in the inter-war period.

"The science of private international law of the people's democratic countries as well as that of the Soviet Union are characterized first of all by the circumstance that they consider private interna-

17. P. 70.
18. P. 71.
19. This is one of the few instances in which the author takes cognizance of the existence of Yugoslavia (difference in spelling is due to the fact of our quoting from the book under review). Yugoslavia is, of course, a socialist-communist state and should be an interesting go-between of the east and west. In fact both Szaszy and Ehrenzweig mention Blagojevic's book on private international law, the latter mentioning Yugoslavia as place of publication; however, neither one refers to any provisions or substantive thoughts or opinions (in the legal sense) in it so that we are in the dark about the content of his 1950 contribution. It would be most appropriate indeed if we could compare through Yugoslav eyes eastern and western doctrine and practice.
20. Pp. 79-80.

tional law as an instrument of *foreign trade policy* and in general of *foreign policy*, whose starting point is the simultaneous coexistence of the socialist and capitalist states and the necessity of the maintenance and development of relations between the states of the two different social systems.[21]

"Primary conditions of these are the acknowledgment of the equality and sovereignty of states, the respect for their interests, non-intervention in their domestic affairs and the recognition of the monopoly of foreign trade. Their science is, in the second place, characterized by the fact that the regulation of the economic relations between socialist states is based on the basic principles of the *unselfish and mutual economic assistance, on that of the co-ordination of interests*.[22] In the third place their science is characterized by class consciousness; the science of private international law in people's democratic countries is a *fighting science*, which, as sciences of law in general, carries on an unrelenting struggle against the theories of western capitalist states."[23] He continues: "[W]eight and importance of the questions of private international law are determined in a way which is different from that which is reflected in the science of private international law of capitalist states. Accordingly, certain questions, which are considered to be of primary importance in the science of capitalist states, e.g. the problem of *renvoi* and off qualification, are deemed to be of secondary importance only, whereas other questions to which only secondary importance is attached in the science of private international law of capitalist countries, e.g. the exemption of a foreign state from the jurisdiction of domestic courts, are treated as primarily important."[24]

Following Ludwiczak, Professor Szaszy continues: "The literature of private international law of the people's democratic countries, in contradistinction to the science of capitalist countries, lays stress upon the following. The rules for the choice of law of imperialist states are intended to ensure the monopolist position of their state. For this reason, it is necessary to take a determined stand against the possibility of abusing the law. In connection with the determination of the law of persons, the acceptance of the *lex domicilii* in the immigration states serves the purpose that the immigrant, as

21. (Reviewer's italics).

22. (Author's italics).

23. Pp. 99-100. (Reviewer's italics).

24. P. 100. Says Ehrenzweig: "International theory speaks of *renvoi* where the 'whole' foreign law which has been found applicable under the choice of law rule of the forum would, under its own choice of law rule, treat the question as subject to the law of the forum (remission) or to the law of a third state (transmission)." EHRENZWEIG, *op. cit. supra* note 9, at 334-335. He quotes agreeingly Rabel "who sees in the concept of *renvoi* 'a classic example of violently prejudiced literature confronting naively consistent practice.' " *Id.* at 340. It goes without saying that Professor Szaszy must be aware of the more modern tendencies in what he likes to call the capitalist world; however, he is greatly concerned with all theories and practices which have aroused the ire and distrust of governments behind the Iron Curtain for many years.

soon as possible, forget his old country, becoming in this way more manageable. The reduced number of rules for the choice of law is intentional, especially in the domain of the law of obligations, because in this way it becomes possible for the capitalist better to control his capital; namely, clear and detailed rules for the choice of law in private international law may induce the courts to decide in many cases in favour of foreigners, and this is what the capitalist states have no intention to allow. In capitalist states, detailed and numerous rules for the choice of law may be found exclusively in family law; this is accounted for by the fact that capitalists consider the conclusion of marriage and divorce as questions of a financial character, the regulation of which is therefore considered necessary. The attitude of the literature of private international law in capitalist states is negative vis-a-vis the principle of the *renvoi* as the capitalist states want to force their views upon the others and to assure the superiority of their capital in international trade. The clause of the *ordre public* is intended to safeguard the interests of the ruling class and its purpose is to prevent the recognition of the nationalizations carried out in socialist states. Bourgeois science of private international law attaches great importance to the problem of nationality of legal persons, because this problem is of overriding importance in capitalist economy."[25]

The reviewer has quoted at some length in order to indicate how consciously and sharply socialist doctrine enters into the legal sphere of what, *in praxi*, as we shall see later, are frequently reasonable and sometimes almost identical decisions and maxims. This can be seen later on in the discussion of the conflict between substantive rules and their points of contact.

Connecting Factors

A theory of connecting factors has been established both in private international law of the west and of the east. The following elements are considered connecting factors: "the nationality of the parties (*lex patriae*), the domicile of the parties (*lex domicilii*), their ordinary or permanent residence (*lex residentiae*), the seat of the legal person (*siege social*), the place where the object of the legal relation is situated (*lex rei sitae*), the place of the legal act performed, of the contract made, of the delict committed (*lex loci actus, lex loci contractus, lex loci delicti commissi*) as well as the place of performance (*lex loci solutionis*), the seat of the court (*lex fori*), the agreement of the contracting parties on the law which is to govern their contract (*lex pro voluntate*), the nationality of the flag, the place of registration of the ship, of the aircraft, etc. In this context, too, the law governing legal relation

25. Pp. 100-101.

in general is termed *lex causae*, which may be *lex personalis, lex obligationis, lex successionis*, etc."[26]

Professor Szaszy states that in capitalist countries the formation of connecting factors also serves the interest of the ruling classes and contains, among others, connecting factors of supranational importance which originate in a super state, whereas the theory of the connecting factors in people's democracies as well as in the Soviet Union stress national character of connecting factors. In most territories of Anglo-Saxon law and in some Latin-American countries as well as in Scandinavian and Dutch law the *lex domicilii* is considered authoritative whereas, in the socialist countries *lex patriae* is generally applied except for certain specified cases. He specifically wishes to oppose the use of the *lex fori* (which is precisely the one that is most applied in and by Ehrenzweig) because it is "in the interest of the ruling class. . . .In capitalist states one of the devices for the unlimited extension of the application of the *lex fori* was the antidemocratic, reactionary utilization of the proviso of public policy against people's democratic and Soviet rules of law, which were connected with the foundations of the construction of socialist conditions of society."[27] He then cites a number of cases in which in his opinion capitalist courts have slighted and disadvantaged Soviet citizens or legal persons by the use of the *lex fori*. Of more than passing interest are his frequent allusions to the rights of political refugees and the question of dual nationality, the former extensively approved of, whereas the latter is seldom regulated by legislation in the people's democracies.

Nor does the literature of people's democratic states accept the "dominant capitalist theory which intends to apply the qualifications adopted by the *lex fori*, because. . .the purpose of the qualification based on the *lex fori* is the unlimited extension of the field of their domestic substantive law for the satisfaction of imperialist interests as well as the preclusion of the application of the law of socialist states."[28] Professor Szaszy asks properly whether the principal application of the law of the stronger interconnection should be accepted as has been the case in Germany.[29] He then maintains "that *in capitalist countries* courts have seriously abused the qualification based on the *lex fori* and arrived in many

26. Pp. 119-120.
27. P. 126.
28. P. 132.
29. It may not be amiss to indicate here that the practical effect of the application of the *lex patriae* or *lex fori* may be frequently the same. The case of Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279 (1963) constitutes one such instance. There the New York Court of Appeals, reversing a long line of precedents, held that New York law would apply to an accident which occurred in Ontario, but which began and ended in New York, and resulted in litigation between two New York residents. Regardless of whether *lex fori* or *lex patriae* would be used, the result would be the same. It seems to us rather far fetched even to consider application of the Canadian statute since the Province of Ontario cannot have any conceivable interest in the accident in question. But under the older theory of vested rights, such an application would have been a matter of course.

cases at indefensible judgments. . .[which] are contradictory to the purpose and essence of private international law because the purpose. . .is to widen international relations and to ensure international and political cooperation. [Thus] legal writers should fight with all their energy at their disposal against abuses of qualifications on the basis of *lex fori*."[30]

Application and Preclusion of Foreign Substantive Law

It is particularly interesting to watch the differences in legal opinions between most of the capitalist countries and most of the socialist countries. The difference does not seem so much whether the application of law does or does not depend on the will of the party, but the difference is shown by the fact that the *ex-officio* application of foreign law in capitalist countries is a marked contradiction to the right of disposal of the parties, which is the cardinal principle of civil procedure.

As far as application of foreign substantive law is concerned, Professor Szaszy points to the difference between capitalist countries and those in the Russian orbit and states that in the latter "the application of foreign law *is independent of the will of the parties*."[31] Of course, Professor Szaszy does not find any contradiction in the legal systems of people's democratic states because "in these countries the principle of the right of disposal, of the parties *a limine* permits the court to take steps in the law suit, if this is required by the interests of *the state*, or of *the working people*, or it is deemed necessary to elucidate *objective truth*."[32]

Interestingly while the parties have, of course, the right to disposal, "it is the right (and duty) of the courts for example to initiate proceedings, to give information and advise [sic] to the parties, approve or refuse their renunciation, acknowledgment and settlement. . .[or] as provided in Soviet law to take action exceeding the request submitted in the statement of the claim."[33]

If the application of foreign substantive law creates some difficulties the preclusion of the application of foreign substantive law creates even more. Professor Szaszy also is quite aware, of course, that foreign law, if otherwise applicable will not be applied contrary to public policy, (in east or west) but it is precisely in the definition of the concept of public policy that the basic differences lie. He admits "that the actual content. . .is *relative*, that it changes . . .with place and time. . .and that it can be determined only on

30. P. 135.
31. P. 148. In spite of the seeming difference which Professor Szaszy makes, this question again is handled identically on both sides of the Iron Curtain. In fact, it could be argued that the much-vaunted differences stressed by eastern European authors are either nonexistent or represent differences between the common law and the civil law.
32. *Ibid.* (Reviewer's italics).
33. P. 149.

ground of legislative and political ideas. . . ."[34] Whereas in his opinion, in the capitalist countries "law is the will. . .of the ruling class"[35] and public policy naturally carries class character, in the people's democratic countries "the principle of political interest has no importance as *general* excluding principle, because. . .the application of foreign law may be refused on account of a conflict with political interest only if the consideration of the political interests of the state concerned is required also by the public policy of that state."[36] A very fine distinction indeed.

Professor Szaszy further states that "all authors in the Soviet Union and the people's democratic countries admit, correctly, that the principle of public policy is needed in all countries capitalist and socialist alike. Similarly, all authors admit, correctly, that the courts are authorized to disregard the application of a rule of foreign law only in the cases where the positive effect of foreign law is contrary to domestic public policy. All of them agree, also correctly, on the principle of the relativity of public policy, on the necessity of making distinction between domestic and foreign public policy, between general and special clauses of public policy, on the importance of existence of the idea of domestic connection, on the concept that if there is a change in public policy the new one shall be considered on the necessity of disregarding clauses of public policy if they result in unjust decisions and finally on the necessity of applying this clause also in international civil procedure."[37]

SPECIAL PART:

SUBJECTS AT LAW AND RIGHT OF OWNERSHIP

In the "specific" part, Professor Szaszy deals with the subjects at law and the law of persons, the right of ownership, legal protection, personal rights attached to intellectual creative activity, the law of obligations in general, sales, settling of accounts, carriage of goods in foreign trades, labor and family law, and the law of succession.

The first important differences between the law of the people's democracies and the west may be found in the regulation of legal capacity. Within the limits of public policy all issues are decided by the *lex patriae*; however, Professor Szaszy agrees that all rights belonging to the foetus, for instance, do not belong to the domain of legal capacity and those are not to be decided in accordance with the law of persons but rather by the *lex causae*. "[T]he

34. P. 176.
35. P. 171.
36. P. 179.
37. Pp. 174-175.

lex patriae also governs the question whether in a concrete case disposing capacity exists at all, whether it is not limited, what the complete absence of disposing capacity entails (nullity or voidability), in what manner absence of disposing capacity may be redressed (e.g. approval of the guardian or of a statutory representative or of some official authority), who is to be considered as guardian or statutory representative. The *lex patriae* governs the specific forms of disposing capacity (capacity to conclude marriage, to make a will, and to be a passive party to bills of exchange), furthermore, in capitalist countries, capacity to carry on business, to conclude commercial transactions. . . . Finally, the *lex patriae* governs the measures taken by the authorities generally which change, terminate or restrict the disposing capacity of persons (declaration of full age, the French emancipation, prolongation of minority, termination of the prolongation, suspension or termination of paternal authority, the French interdiction and appointment of a *conseil judiciaire*). Nevertheless, in people's democratic countries legal systems consider in certain instances also the law of the domicile of the person as applicable relevant to the above-mentioned official measures. . . . However, disposing capacity, if once acquired, is an expedient *not* affected in people's democratic countries by a change in personal law."[38]

Professor Szaszy continues, "it is a basic principle that in respect of ownership and other real rights, as well as of possession of things it is in general the *lex rei sitae*, the law in force at the place where the object is situated, that shall apply, a very few instances excepted. This is unanimously accepted in respect of ownership, real rights and possession of real property, but recently this principle holds good concerning ownership, real rights and possession also on movable property, although some older statutes in people's democratic countries. . .provides the personal law of the possessor (the national law) as applicable. Nevertheless, even in people's democratic countries where there had been such statutes in force, judicial practice and science stand for the *lex rei sitae* also in respect of movable property."[39]

Nationalization, confiscation, and expropriation

"In connection with the determination of the law applicable to real [property] rights, writers on private international law in the Soviet Union and people's democratic states analyse in detail the international aspects of nationalization. . . . [T]wo main problems have been emerging: (i) to what extent the act of nationalization is valid in respect of foreign nationals and legal persons living in the

38. P. 200 (Reviewer's italics).
39. P. 221.

country, (ii) to what extent such law is valid in respect of property abroad of nationals and legal persons, in other words, to what extent laws of nationalization have exterritorial effect. The second problem may be further subdivided into two issues: (a) should the ownership of the nationalizing state be recognized abroad in respect of property that had been abroad at the time of the nationalization? (b) should this ownership be recognized in respect of property which had been in the country at the time and transferred abroad later?

"It is held in the private international law of the Soviet Union and people's democratic countries that the concept of nationalization is to be precisely distinguished from those of *confiscation* and *expropriation.*[40] Confiscation takes place on the ground of a *judgment*, while nationalization is affected directly on the strength of a *statute.*[41] The basis of confiscation is a reason to be sought in the person of the owner, his punishable or reproachable political attitude, whereas the basis of nationalization is the nature of the property. The character of confiscation is penal, that of nationalization is not. Objects of expropriation are things *ut singuli*; consequently, it is a case of a singular succession; on the other hand, nationalization means universal succession. For this reason aspects of nationalization in private international law ought not to be treated, strictly speaking, in the chapter of private international law on the law of property and other real rights, because the law of rights *in rem* does not comprise the problem of universal succession. . . [moreover,] the concepts of capitalist and socialist nationalization are to be precisely distinguished. It is important to point out that nationalization exists in capitalist states as well.

"As regards the problem of confiscation and expropriation, opinion is uniform in people's democratic countries in the respect that these decisions are to be recognized abroad even if the persons subjected to these measures are foreign nationals or legal persons (foreign states being the only exceptions) provided that the property confiscated or expropriated is situated in the territory of the state which has carried out the measures in question. Such decisions are not to be recognized as valid if the property in question is situated abroad, which means that decisions providing for expropriation or confiscation have no extraterritorial effect.

"When discussing private international law problems of *socialist nationalization* it is first of all pointed out by legal writers in people's democratic states that the method of nationalization was not identical in all these countries. In the Soviet Union and in some people's democratic countries the legal independence of the various enterprises was abolished and their property was declared as belonging

40. (Reviewer's italics).
41. (Reviewer's italics).

to the state; this means that the legal personality of the enterprises was changed. In other people's democratic countries, e.g. in Hungary, the various enterprises functioning in the form of joint stock companies retained their legal personality, and in the statutes on nationalization the ownership of the state over the various enterprises was effected by way of nationalizing the shares.

"In the same manner as the validity of decisions on confiscation and expropriation is to be recognized, even though the persons subjected to these measures are foreign nationals or legal persons provided the property confiscated or expropriated is situated in the territory of the state which has so decided, the validity of the statutes on nationalization is also to be recognized, provided the foreign property nationalized is situated on the territory of the state which has carried out the nationalization. *This is admitted even by western authors.*[42] On the other hand, whereas decisions providing for confiscation and expropriation have no extraterritorial effect, statutes on nationalization do have this effect, which means that the validity of nationalizing statutes shall extend also to property which had been in the respective country at the time of nationalization and was transferred abroad later; they are valid even in respect of property which was abroad at the time of nationalization.

"It is well known that courts in western states were endeavoring to refuse recognition of the validity of statutes on nationalization. They did not recognize the validity of those statutes on nationalization which, as was done in the Soviet statutes, abolished the legal personality of the nationalized enterprises because (i) these statutes have no extraterritorial effect, as their character is penal, because as a matter of fact, they decide essentially, in merit, on expropriation or confiscation; (ii) though having extraterritorial effect, their recognition was precluded by public policy; (iii) the statutes on nationalization themselves restricted their validity to the country concerned; (iv) they considered, by way of fictitious arguments, the legal personality of the old enterprise as unchanged and they considered property to be found abroad as a separate property, the destination of which was to satisfy the creditors and to indemnify the previous owners. Western courts did not recognize the validity concerning property situated abroad of such statutes on nationalization either which, as the Hungarian statutes, have maintained the original legal personality of the enterprise, and they did this on the ground that these statutes have no extraterritorial effect, or, if they have, their recognition would be at variance with public policy. The position of western courts was, of course, more difficult on this point. The various arguments put forward by western courts have been energetically refuted in the literature in people's democratic

42. (Reviewer's italics).

states. These authors point out that the statutes on nationalization cannot be considered as penal measures of confiscation or expropriation, or in retaliation of a political attitude; that the scope of persons affected under these statutes coincides with the sphere of state power, therefore the validity of these statutes, as of all statutes, covers every person living in the country and nationals and even if they are staying abroad; that the non-recognition of the extra-territorial validity of these statutes is susceptible of disintegrating the whole system of private international law; that public policy cannot be adduced to thwart a legal effect abroad, and if—under the foreign law—this effect has already materialized at the time of the dispute, public policy must not be an obstacle for the court to enounce it; that public policy can only preserve an existing legal position but cannot restore one which has become extinct; that nationalization means universal transfer of ownership, and to the latter the law in force at the seat of the legal person is to be applied."[43] These opinions are enforced by citing authorities from the Soviet orbit.

Of course, Professor Szaszy is aware of changes in the judicial practice of Western courts vis-a-vis Russian and other nationalizations in line with the general *rapprochement* of east and west. Similarly, in the field of legal protection of personal rights pertaining to intellectual creative ability there are broad areas in which western and eastern law coincide. There are, however, differences between copyright and patent rights within the Soviet orbit; "Hungary adhered in 1931 to the convention of Montevideo of January 11, 1899 on copyright. . .; this was concluded by Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay, and. . .differs. . .from the Conventions of Bern and Rome. . ."[44] (in line with Ehrenzweig's thinking). "Works of foreign authors enjoy protection in people's democratic states, in general, according to the *lex fori*, if they were first published in the country of the forum, furthermore, inasmuch as the people's democratic country has membership in the Union of Bern, also the works protected by the member states of the Union. In other instances protection is due *only if reciprocity has been proved*. Works of foreign authors are protected in the Soviet Union, too, provided they were first published there, and only in this contingency.

"Finally, it should be added that it is pointed out by authors in people's democratic countries and the Soviet Union that the multilateral international conventions discussed above *serve first of all the interests of the great publishing houses*, and only in the second line those of the authors."[45]

43. Pp. 231-235.
44. P. 244.
45. P. 247. (Reviewer's italics).

It would go too far to follow in detail the author's discussion of other rights such as liens, industrial property, inventions, and trademarks; suffice it to say that he places main emphasis on bilateral conventions rather than on overall codification.

Law of Obligations

In his discussion of the law of obligations (contracts) in general Professor Szaszy points out his belief that "in western countries the greatest legal uncertainty prevails in the domain of the international law of obligations."[46] Not only do conflict rules differ considerably, but they have also been subject to judicial practice and jurisprudence; "soviet and people's democratic authors point out that this permanent insecurity in law is not a causal [sic][47] phenomenon but is due to the fact that it is *not intended* to lay down firm and precise principles in this domain by way of legislation, as the protection of the ruling classes and the powerful monopolies may be affected in this way. This insecurity in law is detrimental to international trade. . . ."[48] Professor Szaszy complains that international conferences have been unsuccessful in remedying the situation.

The reproach of legal uncertainty, however, is one of those ethnocentric phenomena we have been speaking of in the introduction. It appears in such instances as the choice of law rule and in the case of *Walton v. Arabian American Oil Company*.[49] In domestic American law, it may be discovered in the doctrine of sovereign immunity, where in many instances a governmental unit may not be sued without its consent, but which has been abolished for federal purposes by the Federal Tort Claims Act. It has been argued that where this somewhat archaic principle still prevails a state denies itself half of its legal (the passive) capacity and ceases to be a state of law in the European sense (*Rechtsstaat*). American legal scholars are fairly unanimous in the condemnation of the doctrine of sovereign immunity. However, they register their disapproval in terms of its injustice, illogic, and inconsistency with the nature of representative government, rather than using European argumentation.[50]

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46. P. 258.

47. The author probably meant to use "casual."

48. *Ibid.* (Reviewer's italics).

49. 233 F.2d 541 (2d Cir. 1956), *cert. denied*, 352 U.S. 872 (1956), in which plaintiff, "a citizen of Arkansas, who, while temporarily in Saudi Arabia, was seriously injured when an automobile he was driving collided with a truck owned by defendant, driven by one of defendant's employees." *Id.* at 542. The complaint was dismissed for failure to plead the pertinent Saudi Arabian law. Saudi Arabian "law" was put in quotation marks, assuming that its existence should have to be proved; as if conduct that is obviously tortious in one country would not be so regarded in another. We consider this another example of ethnocentrism, and there seems little merit in assuming that nobody has law but the in-group. *But cf.* Leary v. Gledhill, 8 N.J. 260, 84 A.2d 725 (1951).

50. EHRENZWEIG, *op. cit. supra* note 9, at 108. Ehrenzweig admits that "whatever the original policy reasons for this rule [sovereign immunity] may have been, both Congress and the judiciary have, over the last 150 years, increasingly taken account of a grow-

With regard to the passive capacity of foreign administrators and executors Ehrenzweig indicates that "contrary to traditional assumption, foreign administrators and executors can ordinarily be sued. And they can be sued not only upon 'new causes of action', but generally like any other individuals, subject only to the rules of governing personal jurisdiction. This rule, having been part of colonial and early American common law, has now (after an interval of non-suability probably caused by legalistic identification of active and passive capacity), been widely restored."[51]

In any event, Professor Szaszy concedes, with regard to legal capacities, that there is a wide range of differences not only between the bourgeois countries but also between the conflict rules in various people's democratic countries.[52]

So, for instance, "the principle of the *lex pro voluntate* ["the agreement of the contracting parties on the law which is to govern their contract"] is admitted in all people's democratic countries . . . [however,] in the matter of application of this principle there are important differences. . ."[53]

Family and Labor Law

The prime example of essential sameness, however, appears to be in family law. Professor Szaszy indicates how author's in people's democratic countries and the Soviet Union diverge in the aspect of family law from the west. He continues: "the main principles of socialist family law are: equality of rights of men and women, monogamy, greatest possible protection of children, marriage can be dissolved only owing to serious and well-founded reasons, no difference can be made between children born in or out of wedlock and/or, at most difference can be made only on the ground that the proving of decendency is subjected to more rigorous requirements

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ing 'chilly feeling against sovereign immunity.' " *Ibid.* In a note he quotes Justice Frankfurter on this "anachronistic survival of monarchical privilege." The principle according to which the state, *i.e.*, the Emperor, may be sued was recognized by Maximilian I, who in 1516 appointed officers (*Die Kammerprokuratoren*) and established an office (*Die Kammerprokuratur*) to represent the Crown and its domain against suits deriving from damages of all sorts. As a point of historical interest, the office still exists in the Austrian Republic under the name of *Finanzprokuratur.*

51 EHRENZWEIG, *op. cit. supra* note 9 at 61-62. As a matter of interest, by 1960 at least eight states, including North Dakota (N.D. Cent. Code § 30-24-18 [1960]) have, "with or without modifications, established by statute the foreign administrator's general standing to be sued." *Ibid.*

52. In a review of LUNZ, INTERNATIONALES PRIVATRECHT (1961), 11 AM. J. COMP. L. 464 (1962), Professor Baade points out, *inter alia*, that the Soviet authors are defenders of sovereign immunity, apparently in pursuit of recognition of their nationalization, expropriation and confiscation policies. He also points out the change between the first edition of Lunz's book in 1949 and its second edition, in German, in 1961. The "tremendous improvement of the Soviet Union's position in world affairs has brought about incisive changes in official Marxist-Leninist doctrine. The expansion of Soviet-type Socialism into a world system has drastically decreased the need for many of the repressive concomitants of 'Socialism in one country.' Especially in view of the emergence of neutralism, the possibility of the world-wide establishment of Socialism by means short of war is now both admitted as a theoretical possibility and officially favored as the optimum solution." *Id.* at 466. Thus a period of relatively undisturbed progress in theory and method may be foreseen with a softening of ethnocentric cultural tendencies.

53. P. 262-263.

if the father and mother have not been married."[54] Does that sound strange or foreign to us? Is not, in fact, the difference in the *concepts* of family law between socialist and capitalist states a purely rhetorical one?

Naturally in the field of labor law there are more than casual differences. Here we have to deal with the very core of Marxian thought. It would be important, of course, to consider whether labor is an exploited mass or a self-respecting part of the population. However, it is not particularly relevant whether labor law belongs to the area of public law or civil law or whether it is a law of *sui generis*, to judge from the not quite five pages that Professor Szaszy devotes to the whole of labor law inasmuch as it deals with private international legal aspects; we may then conclude that there is a dearth of either material or ideas on hand.

Finally with regard to the law of succession—again a very brief chapter—the differences are provided by the basis of socialist thinking. Obviously, in socialist states there can be no transfer of capital, but only transfer of property and thus, all rhetoric again does not hide the fact that in detail many of the same rules apply. Regardless of Marxist phraseology, which, of course, is considerable in the volume under discussion, it can be said, and shown without too much difficulty that basic feeling for law and justice in the capitalist and socialist countries is not too different.

CONCLUSION

The use of the book is somewhat restricted by the absence of subject and author indices. However, Professor Szaszy is not a newcomer in the field of private international law; he is one of its distinguished elder statesman, listing nearly fifty references of his own stretching from 1928 to this time. Nor are the authorities quoted by him and still living and working behind the Iron Curtain negligible quantities. Thus, little purpose can be served in considering the law of socialist countries to be no law at all. The book under review shows very clearly that time behind the Iron Curtain did not stand still. When Ehrenzweig writes "*Russian* doctrine has never broken its relation with continental tradition,"[55] he is by indirection talking about the European people's democracies as well, for he goes on to admonish the American reader to "profit from the new thinking and experimentation that has escaped him for two generations"[56] and sees "many other clear and hopeful trends. Thus, vested interests and 'governing' laws have been largely discarded, fruitful distinctions are made between

54. P. 340.
55. EHRENZWEIG, *op. cit. supra* note 9, at 322.
56. *Id.* at 323.

the 'interstate' or interregional conflicts within the USSR and the Russian orbit, on the one hand, and international conflicts, on the other. And, most important in the present context, Russian doctrine seems to have restored the general principle that, in the absence of compelling grounds for displacing the lex fori, 'the existence of a foreign element is no reason for the application of foreign law.' "[57] This seems to us a singularly benign interpretation of Lunz and others whose work has been translated into German, and is therefore relatively easily accessible.[58]

Basically, however, we are glad to agree that after the gruesomeness of two world wars, civil wars, and revolutions, a certain healthy respect for international legal relationships seems to be appearing.

It is not a question of appeasement nor of cold-war tactics that prompts us to look forward hopefully to the time when out of legal principles ethical norms can be created which, in turn will serve to soften the fear of death and destruction and to unite peoples in a common objective search for mutually beneficial legal understanding.

57. *Ibid.*

58. See also Ehrenzweig's incisive and insightful review of 1 LUNZ, INTERNATIONALES PRIVATRECHT (1961) and PETERESKI & KRYLOV, JAHRBUCH DES INTERNATIONALEN PRIVATRECHTS (1962), 57 AM. J. INT'L L. 685 (1963), in which he says, at 687: [T]he fact remains that Russian scholars have begun to pay serious attention to American case law and doctrine at a time when many Continental and even English scholars still treat our law as *terra incognita*, and when, on the other hand, much of American writing continues to ignore the results of Eastern research, whose characterization as 'Communist' is usually as meaningless as that of Western doctrine as 'capitalist.' " These sentiments are echoed by Sean MacBride, Secretary-General of the International Commission of Jurists, who recently said, "Lawyers have a sacred duty to preserve the physical, moral and intellectual integrity of human beings." Time, January 15, 1965, p. 41.

BOOK REVIEWS

TRANSCENDENT JUSTICE: THE RELIGIOUS DIMENSION OF CONSTITIONALISM, by Carl J. Friedrich.* Lilly Endowment Research Program in Christianity and Politics. Durham: Duke University Press, 1964. Pp. 116, $3.50.

There is evidence of a tremendous amount of scholarship in the pages of this slender volume. It is not easy reading; yet anyone interested in the theology underlying constitutionalism will be richly rewarded by a careful study of Professor Friedrich's book.

The author asserts that Western constitutionalism is basically a product of Christian culture. It may be objected that the roots of constitutionalism reach back into classical antiquity and have their true foundation in Greece and Rome. He disposes of the objection by pointing out that "in short, the *politeia* of Aristotle even in its normative conception as a model political order lacks its specific modern connotation: the exclusion of the government from a personal sphere and more specifically from the sphere of religion. This lack was equally noteworthy in the Roman tradition."[1] In the classical age the accent was on law as a means of producing a strong state. "Roman 'constitutionalism' . . . rested upon a pagan evaluation of human life in terms of *virtus*, and such *virtus* or manliness was understood as predominance on the battlefield and in the market place of political rivalry."[2]

St. Augustine, as a student of Plato and a Roman citizen, reflected the same attitude. He had little faith in human government and looked forward to the City of God for the perfection of man. St. Thomas and other medieval thinkers, on the other hand, evolved a truly Christian concept of constitutionalism, whose function is to define and maintain human rights. ". . . what has persisted throughout the history of Western constitutionalism is the notion that the individual human being is of paramount worth and should be protected against the interference of his ruler, be he a prince, a party or a popular majority."[3] The principle of checks and balances was recognized by the scholastic philosophers. Both subjects and rulers must acknowledge the sovereignty of the Divine Will. Man enjoys

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1. P. 8. All page numbers, unless otherwise noted, refer to the book under review.
2. *Ibid.*
3. P. 17.

liberty under the law; government ultimately receives its authority from God.

The Protestant influence in this field was strong from the beginning of the Reformation. Richard Hooker probably made the most important contribution to the Protestant tradition of constitutionalism. He summed up his view of the transcendent basis of all law in these words: "Of Law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the very last as feeling her case, and the greatest as not exempted from her power."[4]

The mainstream of the Christian tradition continues in the thinking of Kant and Locke. The latter writes:[5] "The *Freedom* then of Man and Liberty of acting according to his own Will, is *grounded on* his having *Reason*, which is able to instruct him in that Law he is to govern himself by, and make him know how far he is left to the freedom of his own will." In other words, the law of nature is the law of reason and both are in effect the law of God.

The notion of absolute rights based on natural law was firmly established before the Constitution of the United States was drafted. What had been suggested in the English Declaration of 1689 was incorporated in some colonial constitutions.

During the nineteenth century rationalism looked upon rights as constitutionally created and guaranteed; the Christian notion that rights are universal and absolute was widely rejected. This was emphasized by Chief Justice Vinson even as late as June 4, 1951 in his statement: "Nothing is more certain in modern society than the principle that there are no absolutes. . . ."[6]

In the twentieth century there has been a shift of emphasis from basic rights to freedoms. There is less interest in abstract rights and more concern over the freedoms so dramatically formulated by Franklin D. Roosevelt. The Bill of Rights as originally adopted no longer seems adequate; it is being spelled out in detail by demands for social security; the right to vote; emancipation from an interference in what we read, think or say; universal education, etc. At the moment, the struggle for the rights and freedoms, especially the right to equal opportunities for education, of racial minorities best illustrates this point. Dr. Friedrich says: "How to combine these newer rights with those recognized earlier has become a serious problem everywhere. This problem cannot, as mentioned before, be solved in universal terms."[7] The author pins his hopes

4. P. 56.
5. LOCKE, *The Second Treatise* § 63, in TWO TREATISES OF GOVERNMENT 327 (Laslet ed. 1960).
6. Dennis v. United States, 341 U.S. 494, 508 (1951).
7. P. 108.

for a solution or at least an improvement of the situation on "a soundly organized democratic process."

It was recognized early in our national history that this process can not function effectively and, as John Adams expressed it, "liberty cannot be preserved, without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge."

Professor Friedrich places much emphasis on the importance of educational opportunity on an equal basis for all citizens if the democratic process is to function properly. But he does not give an adequate answer to the question asked in the foreword by the Director of the Lilly Endowment Research Program in Christianity and Politics, namely: "Can constitutional government survive the demise of a religious and philosophical orientation that originally nurtured its growth?"

THE MOST REV. LEO F. DWORSHAK*

COMMON MARKET CARTEL LAW, by Conrad W. Oberdorfer, Alfred Gleiss, and Martin Hirsch. Chicago: Commerce Clearing House, Inc., 1963. Pp. 225, $15.00.

By tradition Europe is the land of cartelization. As a consequence, the administration of the antitrust provisions contained in the treaty establishing the European Economic Community (EEC), better known as the Common Market, has created a host of problems whose solution is complicated and time-consuming. By the fall of 1964, 37,000 agreements between companies doing business in the Common Market had been submitted to the EEC Commission for a determination of whether or not these agreements ran afoul of the Common Market antitrust regulations.[1] Since the beginning of 1963 the Commission has been engaged in the difficult and unenviable task of formulating criteria for typical agreements which would be under the prohibition of the EEC Treaty and for those which would be permitted to continue in operation. At the close of 1964 only a few decisions had been rendered by the Commission; in three cases the agreements were found to be inoffensive, in three other cases the Commission expressed disapproval.[2]

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1. N.Y. Times, Sept. 27, 1964, § (Financial), p. 1, col. 1.
2. See European Community, July, 1964, p. 10; Aug.-Sept., 1964, p. 15; Oct., 1964, p. 9.

As more and more American firms engage in business within the Common Market countries, it becomes increasingly necessary for American lawyers and businessmen to gain a measure of knowledge about the antitrust laws of the EEC. The authors of *Common Market Cartel Law* seek to meet this need. They state in the preface that their book "is designed primarily to serve as a working tool for the American lawyer and corporate executive dealing with operations of American business establishments or their foreign subsidiaries or of joint American-European undertakings in one or more of the Common Market countries."

The book is basically a translation of the original German work by two of the authors, Gleiss and Hirsch, which appeared in October, 1962, but the American version takes into account some of the developments that occurred since that date. Its format follows the usual pattern of German legal commentaries which normally present only a detailed examination and discussion of individual statutory provisions without furnishing a systematic introduction to the subject matter. The provisions commented upon by the authors are articles 85 and 86 of the EEC Treaty, the core of the Common Market cartel law, and the provisions contained in Regulations 17, 26, and 27. Regulations 17 and 27 implement the rules found in articles 85 and 86 of the Treaty and have, therefore, assumed great importance; Regulation 26 deals with the application of the rules of competition to agricultural products which had been exempted from these rules prior to the promulgation of this Regulation.[3]

As the book was published originally in Germany, it is not surprising that it is primarily oriented toward the legal situation with which German enterprises are confronted. Throughout the book ample references are made to German literature which may not be too meaningful to the American lawyer. On several occasions, however, reference is also made to American antitrust law, and appropriate court decisions and literature are cited, thus greatly enhancing the value of the book for the interested public in the United States.

In general, the commentaries of the authors on the various legal provisions are well reasoned and frequent examples are used to illustrate important points. The major problem areas such as what constitutes a concerted practice or what is meant by distortion of competition are examined in great detail, and in this endeavor the authors have emphasized legal practice rather than academic analysis, an obvious advantage to the practicing lawyer or business executive. On the other hand, certain highly complex problems of

3. Article 42, EEC Treaty.

a doctrinal nature such as the effect of agreements that might be voided retroactively by the Commission or the legal situation of cartels not requiring notification[4] should have been examined in greater depth since the practical consequences of solutions for these problems might be far-reaching.[5]

The translation of the original German book into English is excellent and meets fully the requirements of an American reader from the view point of legal technicality as well as general style. One exception to this encomium is the translation of the conclusions of the *Bosch*[6] case rendered by the Court of Justice of the European Communities in 1962, which seems to follow too literally the German text of this decision and could have been improved upon.[7] One may also have some reservations about the advisability of adding a third English translation of articles 85 and 86 to existing ones as the authors have done.[8] As a consequence there are now seven texts of these provisions: four in the official languages of French, German, Dutch, and Italian, and three unofficial English versions. While the German and Dutch texts of the Treaty appear to support the rewording of article 85, the French text does not offer such support. Moreover, the authors admit that the rewording will not have any appreciable practical effect;[9] on the other hand, three English versions of the Treaty's antitrust provisions tend to cause confusion and make an already difficult situation more vexing.

There are certain weaknesses in the book which, if remedied, would have greatly added to its value for the American lawyer. First, a concise and systematic introduction to the subject matter would have been most helpful. Such an introduction covering articles 85 to 94 of the Treaty would have provided the practicing lawyer with an insight into the full scope of the common market antitrust provisions and would have made it easier for him to understand the references to some of these articles made by the authors in their commentaries. Second, some space should have been devoted to the "legislative" intent in the drafting of articles 85 ff. These provisions are the result of a compromise between the framers of the Treaty, and some historical knowledge in this respect would enhance the reader's comprehension of the EEC antitrust law.[10] Third, a brief survey of the cartel law in the member states as far as it exists would have been invaluable. American firms operating in the Common Market countries may not only be subject to

4. Article 4[2], Regulation 17.
5. For example, in case of damage suits instituted by third parties. See the discussions on pp. 94 and 106 ff. of the reviewed book.
6. See 8 SAMMLUNG DER RECHTSPRECHUNG DES GERICHTSHOFES 97, 103, [1962] 1 C.M.L.R. 1.
7. pp. 87-90.
8. One translation has been made by the Publishing Service of the European Communities and the other by Her Majesty's Stationery Office.
9. p. 19.
10. In this respect see the excellent article by Ellis, *Source Material for Article* 85 (1) *of the EEC Treaty*, FORDHAM L. REV. 247 (1963).

the EEC antitrust regulations but also to national cartel law. The relationship between the Common Market cartel law and the national laws presents many problems of which the American lawyer and business executive must be aware if he is to guide successfully the business activities of an American firm in Western Europe.[11] If such a survey had been included in the book, references of the authors to pertinent national court decisions in the Common Market states might have assumed added meaning.

Despite these weaknesses *Common Market Cartel Law* is a significant contribution not only to the literature on European Community law but also to an understanding of antitrust legislation and law in general. Although in a sense any book dealing with a topic as dynamic as the development of cartel law in the Common Market is dated the moment the ink is dry on the last page, many of the concepts developed or discussed by the authors in their book have lasting value. The price of fifteen dollars for the book, however, appears to be somewhat excessive.

WERNER FELD*

THE CHIEF EXECUTIVE, by Louis W. Koenig. New York: Harcourt, Brace & World, 1964. Pp. 415, $6.00.

Louis W. Koenig, Professor of government at New York University, has written an arresting study of the United States Presidency. The subject matter should make it appealing to lawyers, and its freedom from a heavily academic style renders it easy as well as interesting reading. Koenig analyzes the American Presidency in its various constitutional aspects, as well as those functions which executive leadership can (or should, as you will) involve. He gives the reader interesting accounts of Presidential practice, past and present.

The theme of this book is that the American Presidency is not constitutionally adequate to the task at hand in these times of domestic and foreign crisis. The author is particularly critical of Congress, its hoary rules, its seniority system, and its jealous protection of its own independence from the executive.

I leave it to scholarly research to confirm, but it seems a good

11. In this connection see Deringer, *The Distribution of Powers in the Enforcement of the Rules of Competition under the Rome Treaty*, 1 COMMON MARKET L. REV. 30 (1964).

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guess that similar complaints have been made in times of national emergencies in the past; yet our system has proved flexible enough to do the job. Given overwhelming public support the chief executive can win the necessary congressional support; without such an extensive public consensus it may well be that Presidential power should be limited.

Professor Koenig's book is not a mere collection of general observations. Rather, as each aspect of the Presidency is considered, such as tenure, foreign affairs, military leadership, the reader is supplied with carefully considered recommendations for improvement. Finally, we are presented with a comparison between the American Presidency and the chief executive officer in other nations.

Koenig forthrightly urges changes that will give the nation a stronger national executive. In recent history this makes him an admirer of Democratic Presidents, but does not necessarily make him a political liberal. Over the years both major parties have elected men to the Presidency who believe in a strong national executive. The current conservative theme that a strong executive weakens the federal system has no historical roots in conservatism. Nor must support of so-called "state's rights" logically call for opposition to a vigorous Presidency.

I can agree with the author's view that a strong Presidency is desirable, and, to me, the case stands without aid of reference to domestic and international emergencies. However, I find this book somewhat one-sided in its presentation. Most readers will want to hear from spokesmen on the other side of the counsel table before deciding the case. Very likely Professor Koenig, a teacher of political science, will be satisfied if this provocative book stimulates the reader to make further inquiry.

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